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December 9, 2024

Via Email

Green Bay Area Public School District
Vicki Bayer, Interim Superintendent (*vlbayer@gbaps.org*)

Re: Unlawful Policy of Race-Based Resource Distribution in Reading Support

Dear Superintendent Bayer:

We write to you on behalf of our client, Mrs. Colbey Decker, regarding a troubling and unlawful policy adopted by King Elementary School and the Green Bay Area Public School District. This policy explicitly prioritizes reading support resources based on race, thereby violating the U.S. Constitution and Title VI of the Civil Rights Act of 1964. Mrs. Decker's child, who suffers from dyslexia, has received different (and less favorable) services because he is white. If he was Black, Hispanic, or Native American, Mrs. Decker's son would have been treated more favorably and received different services.

The district's literacy policy establishes "priority groups" by race—namely, Black, Hispanic, and Native American students—and states that the school will conduct "intentional work educating our focus students, *prioritizing additional resources to First Nations, Black, and Hispanic students*." *See* Attachment 1, emphasis supplied. This policy is in effect and has been applied to Mrs. Decker's son, according to multiple district employees.

This policy, while purporting to address disparities, discriminates against students of other races who are equally in need of support. Race is used both as a negative and as a stereotype, in violation of U.S. Supreme Court precedent. The district's policy fails to treat students as individuals and disregards their unique needs.

1. The Racially Discriminatory Policy Harms Students in Need of Support

Despite persistent advocacy by Mrs. Decker, her son's needs were overlooked

for almost a full year, and then his access to essential literacy interventions was delayed. When he first became a student in the school in January 2024, Mrs. Decker promptly informed the school of his dyslexia diagnosis, prior interventions, and asked for clarity on his reading intervention. But the school failed to act and left him without support for the remainder of the school year. This was a significant step backward, as he had previously received one-on-one intervention at his prior school.

Mrs. Decker repeatedly provided documentation and made formal requests for one-on-one reading interventions. In April 2024, Mrs. Decker's son was placed on a wait list for reading intervention, albeit for a less intensive program, even though his needs clearly required more support. This impacted him in the classroom, where his teachers, despite their willingness to help, lacked the expertise or time to provide effective interventions.

By the fall of 2024, Mrs. Decker was finally informed that her son would be enrolled in a one-on-one intervention program, though it was conducted in small groups rather than individualized sessions. This continued lack of adequate support has had a significant impact on her son. He struggles with reading across all subjects. For example, he is skilled at math, but it takes him longer to decode text in math story problems. Even in settings like music class, his inability to read words quickly has forced him to rely on memorization rather than comprehension.

Early and individualized support for students with dyslexia is so important. Delays by the district—with resources being prioritized for students of certain races—has hindered the academic progress of Mrs. Decker's son and denied him access to necessary literacy resources based on his race.

2. The Policy Violates the Fourteenth Amendment and Civil Rights Laws

The district's policy, as stated in the 2024-25 King Elementary School Success Plan, violates constitutional and statutory protections that guarantee equality under the law regardless of race.

Under both Title VI and the United States Constitution, the District has "no … authority … to use race as a factor in affording educational opportunities among its citizens." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 204 (2023). As the Supreme Court stated in *Adarand Constructors, Inc. v. Peña*: "Any preference based on racial or ethnic criteria must necessarily treat persons as individuals, not as simply components of a racial or ethnic class" 515 U.S. 200, 211 (1995). Policies that classify students by race undermine the fundamental principle that all children are entitled to be treated as individuals with dignity and worth.

The U.S. Supreme Court has consistently held that racial discrimination, even

when intended to remediate disparities, must meet exacting standards. In *Parents Involved in Community Schools v. Seattle School District No. 1*, public school districts employed plans to assign students to certain schools "so that the racial balance at the school falls within a predetermined range based on the racial composition of the school district as a whole." 551 U.S. 701, 710 (2007). In striking down the plans, the Court ruled that plans designed "to achieve racial balance" are "patently unconstitutional." *Id.* at 723. "Classifying and assigning schoolchildren according to a binary conception of race is an extreme approach in light of our precedents and our Nation's history of using race in public schools, and requires more than such an amorphous end to justify it." *Id.* at 735.

While the district addressing disparities in reading proficiency is well-intentioned, categorizing students and prioritizing resources based on race is unacceptable. Effective reading interventions can and should be allocated based on individual student needs rather than race.

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d. Courts have interpreted Title VI to apply to policies that disproportionately exclude or disadvantage students based on race. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). By prioritizing students of specific races for additional resources, the district excludes other students, like Mrs. Decker's son, from equal access to educational resources. As the Supreme Court decided in *Students for Fair Admissions*, race may never be used as a negative or as a stereotype. 600 U.S. at 213. The district's policy does just that: because he is white, Mrs. Decker's son's race is a negative for him. And by assuming that certain racial groups need help *because of their race* (rather than their individual needs), the policy is also a stereotype. This is a violation of Title VI.

In this case, the district should address disparities in reading proficiency by focusing on students' individual needs rather than implementing arbitrary racial classifications.

3. The District Must Abandon its Race-Based Prioritization of Resources

Given the district's blatant violation of constitutional and statutory guarantees, and the harm caused to all students including Mrs. Decker's son, we demand the following actions by the district:

1. Rescind the discriminatory policy that prioritizes resources based on race.
2. Adopt a colorblind approach to resource allocation, ensuring that all students receive support based on individual need.
3. Provide immediate and adequate reading support to Mrs. Decker's son, who has been unfairly excluded from the opportunity to receive necessary resources.

We are requesting that the district abandon its discriminatory policy and return its focus to serving all students based on need—not race. If the district declines to do so and continues to sort students by race in order to prioritize which students receive resources, we will take appropriate legal action.

Please respond to this letter by December 16, 2024.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

Dan Lennington
Deputy Counsel

Cory Brewer
Education Counsel

cc: Green Bay Area Public School District Board Members (*via email*)